

Federal Communications Commission

DA 03-2910

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISC-10-1-03

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Arthur and Hazelton, North Dakota)

MB Docket No. 03-208  
RM-10793

**NOTICE OF PROPOSED RULE MAKING****Adopted: October 1, 2003****Released: October 3, 2003****Comment Date: November 24, 2003****Reply Comment Date: December 9, 2003**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making and supplement filed by Vision Media Incorporated ("Petitioner"), licensee of Station KVMI(FM), Arthur, North Dakota., proposing the substitution of Channel 280C1 for Channel 280C3 at Arthur North Dakota., and the modification of Station KVMI(FM)'s license accordingly<sup>1</sup> To accommodate the upgrade, petitioner also proposes the substitution of Channel 277C for vacant Channel 280C at Hazelton, North Dakota. Petitioner states its intention to apply for the channel, if allotted.

2. We believe the proposal warrants consideration since the substitution of Channel 280C1 at Arthur, North Dakota, would allow Station KVMI(FM) to expand its service area. An engineering analysis has determined that Channel 280C1 can be substituted at Arthur in compliance with the Commission's minimum distance separation requirements with a site restriction of 48.5 kilometers (30.1 miles) northwest at petitioner's requested site<sup>2</sup> Additionally, Channel 277C can be substituted at Hazelton with a site restriction 51.6 kilometers (32.0 miles) west at petitioner's requested modified site. Since both Arthur and Hazelton are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(g)(3), of the Commission's Rules, we shall propose that Station KVMI(FM)'s license be modified to specify operation on Channel 280C1 in lieu of Channel 280C3 at Arthur, and will not accept competing expressions of interest for the use of Channel 280C1 at Arthur, North Dakota.

3. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<sup>1</sup> Petitioner originally filed a petition for rule making requesting the substitution of Channel 280C1 for Channel 280A at Arthur, North Dakota. A supplement was subsequently filed advising that Station KVMI(FM)'s license was modified to specify operation on Channel 280C3.

<sup>2</sup> The coordinates for Channel 280C1 at Arthur are 47-19-35 North Latitude and 97-46-15 West Longitude.

<u>Channel No.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Arthur, North Dakota	280C3	280C1
Hazelton, North Dakota	280C	277C

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

5. Interested parties may file comments on or before November 24, 2003, and reply comments on or before December 9, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Michael W. Richards, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1700 North 17th Street, 11<sup>th</sup> Floor  
Arlington, Virginia 22209

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do to apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>3</sup>

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of

<sup>3</sup> See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.